

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

PATRICK WHEELER, individually and on  
behalf of all others similarly situated,

Plaintiff, Civ. No. 3:13-cv-02823-P

v.

FROZEN FOOD EXPRESS INDUSTRIES,  
INC, JERRY T. ARMSTRONG, W. MIKE  
BAGGETT, BRIAN R. BLACKMARR,  
BARRETT D. CLARK, KEVIN K.  
KILPATRICK, T. MICHAEL O'CONNOR,  
STONEY M. STUBBS, JR., S. RUSSELL  
STUBBS, JOHN T. HICKERSON, DUFF  
BROTHERS CAPITAL CORPORATION,  
and DUFF BROTHERS SUBSIDIARY, INC.

Defendants.

**NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A)(i)**

Plaintiff Patrick Wheeler, by and through counsel, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, hereby gives notice of the dismissal of Defendants Frozen Food Express Industries, Inc., Jerry T. Armstrong, W. Mike Baggett, Brian R. Blackmarr, Barrett D. Clark, Kevin K. Kilpatrick, T. Michael O'Connoer, Stoney M. Stubbs, Jr., S. Russell Stubbs, John T. Hickerson, Duff Brothers Capital Capital Corporation, and Duff Brothers Subsidiary, Inc. (the "Defendants") from this proposed class action without prejudice. Plaintiff moves that an Order be entered granting approval of the voluntary dismissal of the Defendants without prejudice and

without notice in accordance with the provisions of Fed. R. Civ. P. 23(e). In support of this motion, Plaintiff states as follows:

1. The Defendants were named in this action in Plaintiff's Complaint filed on July 19, 2013.
2. This Court has subject matter jurisdiction with respect to all claims asserted against each of the Defendants in this action.
3. The Defendants have not filed an answer or motion for summary judgment.
4. No motion for class certification has yet been filed in this action.

WHEREFORE, Plaintiff respectfully moves for an Order approving the voluntary dismissal of this Action without prejudice and without notice pursuant to Fed. R. Civ. P. 23(e).

Dated: July 31, 2013

Respectfully submitted,

/s/ Jamie J. McKey

Joe Kendal  
Texas Bar No. 11260700  
Jamie J. McKey  
Texas Bar No. 24045262  
THE KENDALL LAW GROUP  
3232 McKinney Avenue, Suite 700  
Dallas, Texas 75204  
214-744-3000/214-744-3015 (Facsimile)

LEVI & KORSINSKY, LLP  
Shannon L. Hopkins, Esq.  
30 Broad Street, 24<sup>th</sup> Floor  
New York, New York 10004  
Tel: (212) 363-7500  
Fax: (212) 363-7171  
*Attorneys for Plaintiff*